

## Senate Bill No. 8

### CHAPTER 9

An act to amend Sections 1601 and 1603 of the Fish and Game Code, relating to streambeds.

[Approved by Governor September 15, 1998. Filed  
with Secretary of State September 15, 1998.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 8, Johannessen. Streambed alterations.

Existing law requires a governmental agency or public utility to submit prescribed plans and other information to the Department of Fish and Game and requires those entities and other persons to follow prescribed procedures concerning a project that will affect a river, stream, or lake designated by the department, except certain emergency work, including immediate emergency work necessary to protect life or property, and emergency projects to maintain, repair, or restore an existing highway that are carried out within the existing right-of-way of the highway.

This bill would define "emergency" for the purposes of those provisions. This bill would also exempt from those provisions work conducted outside of the existing right-of-way under specified circumstances.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1601 of the Fish and Game Code is amended to read:

1601. (a) Except as provided in this section, general plans sufficient to indicate the nature of a project for construction by, or on behalf of, any state or local governmental agency or any public utility shall be submitted to the department if the project will (1) divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake designated by the department in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit, (2) use material from the streambeds designated by the department, or (3) result in the disposal or deposition of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake designated by the department. If an existing fish or wildlife resource may be substantially adversely affected by that construction, the department shall notify the governmental agency or public utility of the existence of the fish or wildlife resource together with a description thereof and shall propose reasonable

modifications in the proposed construction that will allow for the protection and continuance of the fish or wildlife resource, including procedures to review the operation of those protective measures. The department's description of an existing fish or wildlife resource shall be specific and detailed and the department shall make available upon request the information upon which its conclusion is based that the resource may be substantially adversely affected. The proposals shall be submitted within 30 days from the date of receipt of the plans, except that the time period may be extended by mutual agreement. Upon a determination by the department and after notice to the affected parties of the necessity for an onsite investigation or upon the request for an onsite investigation by the affected parties, the department shall make an onsite investigation of the proposed construction and shall make the investigation before it proposes any modifications.

(b) (1) Within 14 days from the date of receipt of the department's proposals, the affected agency or public utility shall notify the department in writing whether the proposals are acceptable, except that the time period may be extended by mutual agreement. If the department's proposals are not acceptable to the affected agency or public utility, the agency or public utility shall so notify the department. Upon request, the department shall meet with the affected agency or public utility within seven days of receipt of the notification, or at a time mutually agreed upon, for the purpose of developing proposals that are acceptable to the department and the affected agency or public utility.

(2) If mutual agreement is not reached at the meeting held pursuant to paragraph (1), a panel of arbitrators shall be established. The panel of arbitrators shall be established within seven days from the date of the meeting, or at a time mutually agreed upon, and shall be composed of one representative of the department, one representative of the affected agency or public utility, and a third person mutually agreed upon or, if no agreement can be reached, the third person shall be appointed in the manner provided by Section 1281.6 of the Code of Civil Procedure. The third person shall act as chair of the panel. The panel may settle disagreements and make binding decisions regarding the fish and wildlife modifications. The arbitration shall be completed within 14 days from the date that the composition of the panel is established, unless the time is extended by mutual agreement. The expenses of the department representative shall be paid by the department; the expenses of the representative of the governmental agency or the public utility shall be paid by the governmental agency or the public utility; and the expenses of the chair of the panel shall be paid one-half by each party.

(c) A governmental agency or public utility proposing a project subject to this section shall not commence operations on that project until the department has found that the project will not substantially

adversely affect an existing fish or wildlife resource or until the department's proposals, or the decisions of a panel of arbitrators, have been incorporated into the project. The department shall not condition the streambed alteration agreement on a project subject to this section on the receipt of another state or federal permit.

(d) The department shall determine and specify types of work, methods of performance, or remedial measures that are exempt from this section.

(e) With regard to any project that involves the routine maintenance and operation of water supply, drainage, flood control, or waste treatment and disposal facilities, notice to, and agreement with, the department is not required subsequent to the initial notification and agreement, unless the work as described in the agreement is substantially changed or conditions affecting fish and wildlife resources substantially change, and the resources are adversely affected by the activity conducted under the agreement. This subdivision applies in any instance where notice to, and agreement with, the department has been attained prior to January 1, 1977.

(f) (1) Except as provided in paragraph (2), this section does not apply to any of the following projects:

(A) Immediate emergency work necessary to protect life or property.

(B) Immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(C) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. Work needed in the vicinity above and below a highway may be conducted outside of the existing right-of-way if it is needed to stop ongoing or recurring mudslides, landslides, or erosion that pose an immediate threat to the highway or to restore those roadways damaged by mudslides, landslides, or erosion to their predamage condition and functionality. This subparagraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(2) The agency or public utility performing the project shall notify the department within 14 days from the date of commencement of a project exempted by this subdivision.

(3) For purposes of this subdivision, “emergency” means an emergency, as defined in Section 21060.3 of the Public Resources Code.

(g) The department may enter into agreements with applicants for a term of not more than five years for the performance of operations on projects subject to this section. The terms of the agreement may be renegotiated at any time by mutual consent of the parties. Each agreement shall be renewed automatically by the department at the expiration of its term unless the department determines that there has been a substantial change in conditions. If there is a disagreement between the department and the applicant as to whether there has been a substantial change in conditions, the department and the applicant shall proceed to arbitration pursuant to subdivision (b). The department may charge a fee when the agreement is entered into and for each renewal, but may not charge an annual fee for this purpose.

SEC. 2. Section 1603 of the Fish and Game Code is amended to read:

1603. (a) It is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the department, or use any material from the streambeds, without first notifying the department of that activity, except when the department has been notified pursuant to Section 1601. The department, within 30 days from the date of receipt of that notice, or within the time determined by mutual written agreement, shall, when an existing fish or wildlife resource may be substantially adversely affected by that activity, notify the person of the existence of that fish or wildlife resource together with a description of the fish or wildlife, and shall submit to the person its proposals as to measures necessary to protect fish and wildlife. Upon a determination by the department of the necessity for onsite investigation or upon the request for an onsite investigation by the affected parties, the department shall notify the affected parties that it shall make an onsite investigation of the activity and shall make that investigation before it proposes any measure necessary to protect the fish and wildlife. The department’s description of an existing fish or wildlife resource shall be specific and detailed and the department shall make available upon request the information upon which its conclusion is based that the resource may be substantially adversely affected.

(b) (1) Within 14 days from the date of receipt of the department’s proposals, the affected person shall notify the department in writing whether the proposals are acceptable, except that the time period may be extended by mutual agreement. If the

department's proposals are not acceptable to the affected person, the person shall so notify the department. Upon request, the department shall meet with the affected person within seven days from the date of receipt of that notification or by a date that may be mutually agreed upon for the purpose of developing proposals that are acceptable to the department and the affected person.

(2) If mutual agreement is not reached at the meeting held pursuant to paragraph (1), a panel of arbitrators shall be established. However, appointment of the panel may be deferred by mutual consent of the parties. The panel shall be established within seven days from the date of that meeting and shall be composed of one representative of the department, one representative of the affected person, and a third person mutually agreed upon or, if no agreement can be reached, the third person shall be appointed in the manner provided by Section 1281.6 of the Code of Civil Procedure. The third person shall act as panel chair. The panel may settle disagreements and make binding decisions regarding fish and wildlife modifications. The arbitration shall be completed within 14 days from the date that the composition of the panel is established, unless the time period is extended by mutual agreement. The expenses of the department representative shall be borne by the department; the expenses of the representative of the person who diverts or obstructs the natural flow, or changes the bed, of any river, stream, or lake, or uses any material from the streambeds shall be borne by that person; and the expenses of the chair of the panel shall be paid one-half by each party.

(c) It is unlawful for any person to commence any activity affected by this section until the department has found that it will not substantially adversely affect an existing fish or wildlife resource or until the department's proposals, or the decisions of a panel of arbitrators, have been incorporated into the activity. If the department fails to act within 30 days from the date of the receipt of the notice, the person may commence the activity. The department shall not condition the streambed alteration agreement on the receipt of another state or federal permit.

(d) It is unlawful for any person to engage in an activity affected by this section, unless the activity is conducted in accordance with the department's proposals or the decisions of the panel of arbitrators.

(e) If an activity involves the routine maintenance and operation of water supply, drainage, flood control, or waste treatment and disposal facilities, notice to and agreement with the department shall not be required subsequent to the initial notification and agreement unless the work as described in the agreement is substantially changed or conditions affecting fish and wildlife resources substantially change and those resources are adversely affected by the activity conducted under the agreement. This subdivision applies in any instance where notice to, and agreement with, the department has been attained prior to January 1, 1977.

(f) (1) Except as provided in paragraph (2), this section does not apply to any of the following projects:

(A) Immediate emergency work necessary to protect life or property.

(B) Immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(C) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. Work needed in the vicinity above and below a highway may be conducted outside of the existing right-of-way if it is needed to stop ongoing or recurring mudslides, landslides, or erosion that pose an immediate threat to the highway or to restore those roadways damaged by mudslides, landslides, or erosion to their predamage condition and functionality. This subparagraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(2) The person performing the project shall notify the department within 14 days from the date of commencement of a project exempted by this subdivision.

(3) For purposes of this subdivision, “emergency” means an emergency, as defined in Section 21060.3 of the Public Resources Code.

(g) The department may enter into agreements with applicants for a term of not more than five years for the performance of activities subject to this section. The terms of the agreement may be renegotiated at any time by mutual consent of the parties. Each agreement shall be renewed automatically by the department at the expiration of its term unless the department determines that there has been a substantial change in conditions. If there is a disagreement between the department and the applicant as to whether there has been a substantial change in conditions, the department and the applicant shall proceed to arbitration pursuant to subdivision (b). The department may charge a fee when the agreement is entered into and for each renewal, but may not charge an annual fee for this purpose.

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